

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 7, 2004**

CASE OF GÓMEZ-PAQUIYURI BROTHERS V. PERU

PROVISIONAL MEASURES

HAVING SEEN:

1. The application brief submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of February 5, 2002, Marcelina Paquiyauri Illanes de Gómez, Ricardo Samuel Gómez Quispe, Lucy Rosa Gómez Paquiyauri and Ángel del Rosario Vásquez Chumo were proposed as witnesses. In this brief, the Commission also indicated the purpose of the proposed testimony.

2. The brief with requests, arguments and evidence of April 15, 2002, in which the representative of the alleged victims and their next of kin proposed "Miguel Angel Gómez Paquiyauri [...], Víctor Chuquitaype Eguiluz [...], Jacinta Peralta Allcarima [...] and] Juan Quiroz Chávez" as witnesses. The representative also indicated the purpose of the proposed testimony.

3. The Order of the President of the Court of March 1, 2004, in which, among other matters, he decided:

[...]

6. To convene the Inter-American Commission on Human Rights, the representative of the alleged victims and their next of kin, and the State, to a public hearing to be held at the seat of the Inter-American Court of Human Rights, commencing at 3.00 p.m. on May 5, 2004, to hear the final oral arguments on the merits and possible reparations and costs in the instant case, and also the statements of the following witnesses and expert witnesses:

Witnesses

A) Proposed by the Inter-American Commission on Human Rights:

1. *Marcelina Paquiyauri Illanes de Gómez*, will make a statement concerning "the circumstances [of] the [alleged] murder of the Gómez Paquiyauri brothers and other events related to the object and purpose of [the] application."

2. *Ricardo Samuel Gómez Quispe*, will make a statement concerning "the circumstances [of] the [alleged] murder of the Gómez Paquiyauri brothers and other events related to the object and purpose of [the] application."

3. *Lucy Rosa Gómez Paquiyauri*, will make a statement concerning "the circumstances [of] the [alleged] murder of the Gómez Paquiyauri brothers and other events related to the object and purpose of [the] application."

4. *Ángel del Rosario Vásquez Chumo* will make a statement concerning "the circumstances [of] the [alleged] murder of the Gómez Paquiyauri brothers and other events related to the object and purpose of [the] application."

B) Proposed by the representative of the alleged victims and their next of kin:

5. *Miguel Ángel Gómez Paquiyaury*, will make a statement concerning “the facts and circumstances immediately preceding the [alleged] detention, torture and murder of Emilio and Rafael Gómez Paquiyaury, and also on the impact that the [alleged] violations suffered by the [alleged] victims have had on himself as a next of kin of the [alleged] victims.

[...]

8. *Jacinta Peralta Allcarima*, will make a statement concerning “the impact that the [alleged] torture and [the alleged] assassination of Rafael Gómez [Paquiyaury] has had on his daughter who is a minor.”

[...]

4. The public hearing held in the instant case at the seat of the Court on May 5, 6 and 7, 2004.

5. The statement made by the witness, Ángel del Rosario Vásquez Chumo, during the public hearing (*supra* fourth having seen paragraph), in which he stated:

I was intimidated, coerced and threatened so that I would not tell the truth about the facts, but [...] I wanted the hearing of the oral proceeding to begin at once so that I could tell how the events occurred. When the oral proceeding took place, after two years, I told everything about how the events occurred; when I got out of prison and was able to return to society, all doors were closed to me, because I was simply identified as “*vaca'e chumbo*” and all doors were closed to me [...].

I ask you to help me ensure that no reprisals are taken against me and my family, because there were threats some time ago and now, well, to hide the things that have occurred; afterwards they make take reprisals against me and my family.

6. The statements made by the witnesses, Lucy Rosa Gómez Paquiyaury, Marcelina Paquiyaury Illanes de Gómez, Ricardo Samuel Gómez Quispe, Miguel Ángel Gómez Paquiyaury and Jacinta Peralta Allcarima, all next of kin of the alleged victims in this case, during the public hearing (*supra* fourth having seen paragraph), in which they indicated that they had been persecuted and harassed following the events of the case.

7. The brief of May 7, 2004, in which the representative of the alleged victims and their next of kin requested the Court “to take the measures it deems appropriate to ensure that[,] both the members of the Gómez Paquiyaury family who have appeared as witnesses in the hearing on this case held by the Court[,] and those who are in Peru[,] do not suffer reprisals for their situation as [alleged] victims in this case, or harassment or persecution, by intrusion into their homes with coercion and threats.” In this brief, the representative of the alleged victims and their next of kin indicated that the Gómez Paquiyaury family had previously reported repeated visits from State agents, “warning the family, with threats, to accept and sign documents withdrawing the litigation before the Court” in this case.

CONSIDERING:

1. That the State of Peru (hereinafter “the State” or “Peru”) has been a State party to the American Convention on Human Rights since July 28, 1978, and accepted the obligatory jurisdiction of the Court on January 21, 1981.

2. That Article 63(2) of the American Convention establishes that, in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court shall adopt such provisional measures as it deems pertinent, in matters it has under consideration.

3. That, in the words of Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"):¹

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

[...].

3. In contentious cases already submitted to the Court, the victims or the alleged victims, their next of kin or their duly accredited representatives, may present a request for provisional measures directly to the Court.

[...]

6. The beneficiaries of provisional measures, or urgent measures decided by the President, may address their comments on the report made by the State directly to the Court. The Inter-American Commission on Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.

4. That according to these provisions, it is evident that the Court may act on its own motion in cases of extreme gravity and urgency to avoid irreparable damage to persons.²

5. That Article 1(1) of the Convention indicates that States Parties have the obligation to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

6. That, in particular, as this Court has stated, "it is the responsibility of the State to adopt safety measures to protect all persons subject to their jurisdiction and this obligation is even plainer with regard to those who are involved in proceedings before the supervisory organs of the American Convention."³

¹ This Order is issued in accordance with the provisions of the Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an Order of November 24, 2000, which entered into force on June 1, 2001, and according to the partial reform adopted by the Court during its sixty-first regular session in an Order of November 25, 2003, which entered into force on January 1, 2004.

² *Cf., inter alia, Case of Helen Mack Chang et al.*, Provisional Measures. Order of the Inter-American Court of Human Rights of February 21, 2003, fourth considering paragraph; *Case of Paniagua Morales et al.*, Provisional Measures. Order of the Inter-American Court of Human Rights of January 29, 2001, fourth considering paragraph; and *Case of Loayza Tamayo*, Provisional Measures. Order of the President of the Inter-American Court of Human Rights of December 13, 2000, fourth considering paragraph.

³ *Cf., Case of The Urso Branco Prison case*, Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2004, fifth considering paragraph; *The Urso Branco Prison*, Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 2002, fifth considering paragraph; and *Case of the Peace Community of San José de Apartadó*, Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, fifth considering paragraph.

7. That, in general, under domestic legal systems (internal procedural law), the purpose of provisional measures is to protect the right of the parties to the dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.

8. That, under international human rights law, the purpose of urgent and provisional measures goes further, because, in addition to their essentially preventive nature, they protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

9. That the adoption of provisional measures does not imply a decision on the merits of the dispute in the instant case.⁴ By adopting provisional measures, the Court is merely ensuring that it can faithfully exercise its mandate under the Convention in cases of extreme gravity and urgency that require measures of protection to avoid irreparable damage to persons.

10. That, in other cases, the Court has ordered provisional measures to protect witnesses who have made statements before it.⁵

11. That the situation (alleged harassment and persecution) described by the witnesses in this case, Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri and Jacinta Peralta Allccarima (*supra* fourth and sixth having seen paragraphs), proves *prima facie*, the possible existence of a situation of extreme gravity and urgency, and makes it necessary to avoid irreparable damage to the right to life and personal safety of the members of the Gómez Paquiyauri family: Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez; Marcelina Haydée, Ricardo Emilio, Carlos Pedro, Lucy Rosa and Miguel Ángel, the latter all Gómez Paquiyauri; Jacinta Peralta Allccarima, and the minor, Nora Emely Gómez Peralta.

12. That Ricardo Emilio and Carlos Pedro Gómez Paquiyauri are confined in Peruvian prisons, according to the statement made by Ricardo Samuel Gómez Quispe during the public hearing (*supra* fourth having seen paragraph).

13. That, given the State's responsibility to adopt safety measures to protect all persons subject to its jurisdiction, the Court deems that this obligation is even plainer in the case of persons confined in a State detention center, in which case the State is guarantor of the rights of the persons in its custody.⁶

⁴ Cf., *inter alia*, *Case of Lysias Fleury*, Provisional Measures. Order of the Court of June 7, 2004, tenth considering paragraph; *Case of the Communities of the Jiguamiandó and of the Curbaradó*, Provisional Measures. Order of the Court of March 6, 2003, twelfth considering paragraph; and *Case of Liliana Ortega et al.*, Provisional Measures. Order of the Inter-American Court of Human Rights of November 27, 2002, sixth considering paragraph.

⁵ Cf., *inter alia*, *Case of Bámaca Velásquez*, Provisional Measures. Order of the Inter-American Court of Human Rights of November 20, 2003, fifth, and eleventh to thirteenth considering paragraphs; *Case of Helen Mack Chang et al.*, Provisional Measures. Order of the Inter-American Court of Human Rights of February 21, 2003, eighth considering paragraph; *Case of Haitians and Dominicans of Haitian origin in the Dominican Republic*, Provisional Measures. Order of the Inter-American Court of Human Rights of August 18, 2000, thirteenth considering paragraph.

⁶ Cf. *Case of The Urso Branco Prison*, Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2004, sixth considering paragraph; *Case of The Urso Branco Prison*, Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 2002, sixth considering

14. That Ángel del Rosario Vásquez Chumo was a direct witness of the Case of *Gómez Paquiyauri* (*supra* fourth and fifth having seen paragraphs), and this situation has resulted in his allegedly being subject to threats and other intimidating acts, and has also caused him to fear that these acts may continue against himself and his family. Moreover, from his statements, it can be inferred that he, or the members of his family, may be subject to reprisals as a result of his statements before this Court.

15. That the statements of the witness, Ángel del Rosario Vásquez Chumo, reveal *prima facie* the possible existence of a situation of extreme gravity and urgency and make it necessary to avoid irreparable damage to the right to life and personal safety of Ángel del Rosario Vásquez Chumo and his family.

16. That the standard of *prima facie* assessment of a case and the application of assumptions in the face of the need to provide protection, have led the Court to order provisional measures on several occasions.⁷

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To call upon the State to adopt forthwith all necessary measures to protect the life and safety of the members of the Gómez Paquiyauri family who made statements before the Court, Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri and Jacinta Peralta Allcarima, and those who are in Peru: Ricardo Emilio, Carlos Pedro and Marcelina Haydée, all Gómez Paquiyauri, and the minor, Nora Emely Gómez Peralta.

2. To call upon the State to adopt forthwith all necessary measures to protect the life and safety of Ángel del Rosario Vásquez Chumo and the members of his family.

3. To call upon the State to allow the beneficiaries of these provisional measures to take part in the planning and implementation of the measures of protection and, in general, to keep them informed on progress in the provisional measures decided by the Inter-American Court of Human Rights.

paragraph; and *Case of The Urso Branco Prison*, Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, eighth considering paragraph.

⁷ *Cf., inter alia, Case of Bámaca Velásquez*, Provisional Measures. Order of the Inter-American Court of Human Rights of November 20, 2003, twelfth considering paragraph; *Case of Marta Colomina and Lilitana Velásquez*, Provisional Measures. Order of the Inter-American Court of Human Rights of September 8, 2003, fifth considering paragraph; and *Case of Lysias Fleury*, Provisional Measures. Order of the Inter-American Court of Human Rights of June 7, 2003, ninth considering paragraph.

4. To call upon the State to inform the Inter-American Court of Human Rights of the provisional measures it has adopted to comply with this Order, within fifteen days of its notification.

5. To call upon the representative of the alleged victims and their next of kin, in representation of the beneficiaries of these provisional measures, members of the Gómez Paquiyauri family, to submit their comments on the State's report within one week of receiving it, and upon the Inter-American Commission on Human Rights to present its comments on the State's report within two weeks of receiving it. The Commission's comments should refer, in particular, to the situation of the protection provided to Ángel del Rosario Vásquez Chumo, the witness it had proposed and who is not represented by anyone as regards these provisional measures.

6. To call upon the State, following its first communication (*supra* fourth operative paragraph), to continue informing the Inter-American Court of Human Rights, every two months, on the provisional measures it has adopted, and to call upon both the representative of the alleged victims and their next of kin, and the Inter-American Commission on Human Rights to submit their comments on these reports of the State within four weeks and six weeks, respectively, of receiving the said reports of the State.

7. To notify this Order on provisional measures to the State, the Inter-American Commission on Human Rights, and the representative of the Gómez Paquiyauri family.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Francisco José Eguiguren-Praeli
Judge *ad hoc*

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary